

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS

BEAUMONT DIVISION

ROBIN GIDDINGS

§

VS.

§

CIVIL ACTION NO. 1:05cv712

J. SMITH

§

MEMORANDUM ORDER OVERRULING PLAINTIFF'S OBJECTIONS AND ADOPTING
THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Plaintiff Robin Giddings, a prisoner confined at the Stiles Unit of the Texas Department of Criminal Justice, Correctional Institutions Division, proceeding *pro se*, filed this civil rights action pursuant to 42 U.S.C. § 1983 against Warden J. Smith.

The court ordered that this matter be referred to the Honorable Keith F. Giblin, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The magistrate judge has submitted a Report and Recommendation of United States Magistrate Judge. The magistrate judge recommends dismissing the complaint without prejudice for failure to exhaust administrative remedies.

The court has received and considered the Report and Recommendation of United States Magistrate Judge, along with the record, pleadings, and all available evidence. Plaintiff filed objections to the magistrate judge's Report and Recommendation.

The court has conducted a *de novo* review of the objections in relation to the pleadings and the applicable law. *See* FED. R. CIV. P. 72(b). After careful consideration, the court concludes the objections are without merit. First, plaintiff alleges that exhaustion should not be required in this case because the defendant failed to comply with a mandatory evacuation order. This argument lacks merit because the exhaustion requirement applies to all prisoner lawsuits

concerning prison life, whether they involve general circumstances or particular episodes. *Porter v. Nussle*, 534 U.S. 516, 532 (2002). Plaintiff also contends that he was unable to exhaust administrative remedies because prison officials interfered with his access to the grievance procedure. This argument is not supported by the record because plaintiff has submitted grievances showing that prison officials did process his grievances. Because plaintiff received a final ruling on his grievance after this lawsuit was filed, this case must be dismissed. 42 U.S.C. § 1997e(a).

ORDER

Accordingly, plaintiff's objections are **OVERRULED**. The findings of fact and conclusions of law of the magistrate judge are correct and the report of the magistrate judge is **ADOPTED**. A final judgment will be entered in this case in accordance with the magistrate judge's recommendation.

SIGNED at Beaumont, Texas, this 3rd day of January, 2006.



MARCIA A. CRONE
UNITED STATES DISTRICT JUDGE